

DEC 15 '20 PM3:49
OHIO CO CIRCUIT COURT

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**RUSSELL BENNETT and
BARBARA BENNETT,**

Plaintiff,

vs.

Civil Action No. 20-C-246

**VEBI VEHAPI and
MS TRANSPORT, LLC,**

Judge Sims

Defendants.

AMENDED COMPLAINT

NOW COMES the Plaintiffs, Russell Bennett and Barbara Bennett, by and through counsel, Zavolta Law Office, and for their cause of action against the Defendants, Vebi Vehapi and MS Transport, LLC, state and alleges, as follows, to-wit:

GENERAL ALLEGATIONS

1. Plaintiff Russell Bennett, (hereinafter referred to as "Plaintiff Bennett") is an adult individual and resident of 332 Bennett Lane, Dallas, Ohio County, West Virginia, 26036.
2. Plaintiff Barbara Bennett, (hereinafter referred to as "Plaintiff Barbara Bennett") is an adult individual, the wife of Plaintiff Russell Bennett, and a resident of 332 Bennett Lane, Dallas, Ohio County, West Virginia, 26036.
3. Based on available information and belief Defendant Vebi Vehapi is an adult individual and resident at 10044 Bunker Hill Drive, St. Louis, Missouri 63123.
4. Defendant MS Transport is a foreign corporation organized under the laws of the State of Missouri and markets itself as a full support freight service provider to

locations throughout the United States including the State of West Virginia, thereby purposefully availing itself to the laws, benefits, privileges and protections of the State of West Virginia.

5. That according to the State of Missouri Secretary of State's website, Defendant MS Transport, LLC has a registered address of 1091 Hickory Ridge Trail, Arnold, Missouri, 63010.

6. Defendant MS Transport, LLC actively, continuously and systematically conducts and contracts business in West Virginia by utilizing West Virginia roadways, interstates and routes to facilitate delivery and or transportation of goods, products and or services, thereby purposefully availing itself to the laws, benefits, privileges, and protections of the State of West Virginia.

7. Defendants Vebi Vehapi and MS Transport, LLC had applicable liability insurance coverage in place through Canal Insurance Company, claim number L5204590, policy number 12687800012.

8. At all times material and relevant herein, Plaintiff Russell Bennett at the time of the accident at issue had applicable liability motor vehicle coverage through American National Insurance Company, Policy Number 47-A-3TY825.

9. Plaintiff Russell Bennett was at all times without comparative negligence and or any other wrongful conduct concerning the accident at issue in this litigation.

10. At all times material and relevant herein Defendant Vehapi was within the active course and scope of his employment and or agency relationship with Defendant MS Transport, LLC.

COUNT I - NEGLIGENCE - DEFENDANT VEBI VEHAPI AND OR MS TRANSPORT

11. Plaintiffs hereby incorporate by reference all paragraphs of this Complaint as if fully restated herein.

12. That on or about November 11, 2019, in Triadelphia, near the overpass known as Stoolfire Road, Ohio County, West Virginia, on a public roadway known as Interstate 70, Eastbound, Defendant Vebi Vehapi carelessly, recklessly, negligently and or grossly negligently operated a 2020 Truck/Tractor motor vehicle, owned by Defendant MS Transport Incorporated, in such a manner and with such great force as to negligently cause a severe and substantial side-swipe type collision with Plaintiff Bennett's 2012 Ford F250 Pick-up truck motor vehicle.

13. Defendant Vebi Vehapi was operating said motor vehicle as a permissive user and/or in the course and scope of his employment with the express and or implied permission of owner Defendant MS Transport Incorporated, thereby causing any and all applicable insurance coverage to apply to this severe, substantial collision.

14. Defendants, at the time of the motor vehicle accident at issue, were negligent in causing serious injuries, damages, and losses to Plaintiff Russell Bennett as will be hereinafter set forth.

15. Defendants as alleged hereinbefore, were reckless and or negligent toward Plaintiff Russell Bennett, in one or more of the following areas, among others in the operation of said motor vehicle, including violating the Motor Vehicle Code, safety laws and other laws of the State of West Virginia, including, but not limited to:

- (a) Failure to maintain control of his vehicle;

- (b) Failure to exercise due care generally in the operation of said motor vehicle;
- (c) Operating said motor vehicle in a manner unsuited to the roadway;
- (d) Failing to observe the traffic which was lawfully on the roadway;
- (e) Failing to keep a safe lookout;
- (f) Failing to operate the said motor vehicle in accordance with existing traffic conditions;
- (g) Following too closely;
- (h) Excessive speed;
- (i) Other acts and or omissions.

16. As a direct and proximate result of the negligent acts and omissions by Defendants Vebi Vehapi and or MS Transport Incorporated, Plaintiff Russell Bennett was proximately caused to be injured and damaged as hereinafter set forth.

COUNT II - NEGLIGENT ENTRUSTMENT

17. Plaintiffs hereby incorporate by reference all paragraphs of this Complaint as if fully restated herein.

18. Based on the available information and belief Defendant MS Transport Incorporated was the owner of the 2020 Volvo VLN760 Truck/Tractor motor vehicle operated by Defendant Vebi Vehapi.

19. Defendant MS Transport Incorporated, based upon the available information and beliefs at all times material and relevant, had actual and or constructive notice and knowledge that Defendant Vebi Vehapi was unfit to operate the 2020 Volvo VLN760 Truck/Tractor motor vehicle with reasonable safety for other motor vehicle

operators upon the roadways of the State of West Virginia, including, but not limited to Plaintiff Russell Bennett.

20. Defendant MS Transport Incorporated thereby breached duties owed and committed negligence in entrusting the said motor vehicle to Defendant Vebi Vehapi.

21. As a direct and proximate result of the negligent, careless and negligent acts and omissions and other violations of the law by Defendants as aforesaid, Plaintiff Russell Bennett was injured and damaged as hereinbefore set forth.

22. As a direct and proximate result of the negligent acts and/or omissions, and/or other violations of law, by the Defendants as aforesaid, Plaintiff Russell Bennett was proximately caused to be injured to the following, but not limited to, areas of his body: in and about his head, neck, back, shoulders, arms, extremities, body chemistry, psyche, muscles, tissues, fascia, and other body parts and injuries, both internally and externally, and inasmuch as all or part of his injuries are permanent and lasting in nature, he has and will in the future suffer great pain of body and mind.

23. As a further direct and proximate result of the Defendants' negligent acts and or other violations of law, Plaintiff Russell Bennett was proximately caused to incur divers and sundry expenses for medical care and treatment to date in an amount undetermined, and inasmuch as all or part of Plaintiff Russell Bennett's injuries are permanent and lasting in nature, he has and will in the future suffer divers and sundry expenses for medical care and attention in an effort to treat, manage and/or effect a cure for his injuries and causally related symptomatology; Plaintiff Russell Bennett has suffered a diminution in his ability and capacity to care for himself and enjoy a normal life;

Plaintiff Russell Bennett is anticipated to sustain future loss of earning capacity; and all of which will continue into the future.

24. As a further direct and proximate result of the negligent acts and/or omission, and/or other violations of the law by Defendants, Plaintiff Russell Bennett has been prevented from carrying out the duties and responsibilities of his life; Plaintiff Russell Bennett has been prevented from leading his life socially and recreationally as he had prior to this accident; Plaintiff Russell Bennett's permanent injuries have adversely affected his ability to enjoy the ordinary functions of life, together with the capability to function as a whole person; and all of which will continue into the future.

capability to function as a whole person; and all of which will continue into the future.

COUNT III - LOSS OF CONSORTIUM - BARBARA BENNETT

25. Plaintiffs hereby incorporate by reference all prior paragraphs of this Complaint as if fully restated herein.

26. As a further direct and proximate result of recklessness, carelessness, negligence, and violations of the law by the Defendant as aforesaid, Plaintiff Barbara Bennett has lost the consortium of her husband, Plaintiff Russell Bennett, inasmuch as the injuries to Plaintiff Russell Bennett are permanent and lasting in nature, Plaintiff Barbara Bennett will continue in the future to be deprived of the consortium and services of her husband, Plaintiff Russell Bennett.

COUNT IV - PROPERTY DAMAGE

27. Plaintiffs hereby incorporate by reference all prior paragraphs of this Complaint as if fully restated herein.

28. As a further direct and proximate result of carelessness, negligence, and violations of the law by Defendant as aforesaid, Plaintiff Russell Bennett was and continues to suffer property damage losses and other related losses, including but not limited to the following, but not limited to: Loss of Use, Annoyance, Inconvenience, Aggravation, costs, and expenses.

WHEREFORE, Plaintiffs Russell Bennett and Barbara Bennett demand judgment against Defendants MS Transport Incorporated and Vebi Vehapi in an amount in excess of the minimum jurisdictional limits as compensatory damages, plus pre and post-judgment interest and costs, punitive damages and such further relief as a court or jury may find; and Plaintiffs further demand interest and costs incurred in and about the prosecution of this action and for such other relief as a court or jury may find. The minimum jurisdictional amount for filing this action has been satisfied.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES.

Respectfully submitted,

Plaintiffs, et. al.

By: Paul J. Ratcliffe
Plaintiffs' Counsel

Ronald W. Zavolta (W.Va. State Bar ID #8739)

Paul J. Ratcliffe (W.Va. State Bar ID #13453)

Michael P. Zavolta (W.Va. State Bar ID #13871)

ZAVOLTA LAW OFFICE

1287 Fairmont Pike Road

Wheeling, WV 26003

Telephone: (304) 905-8073

Facsimile: (304) 905-8992

Email: Paul@zavoltalaw.net

DEC 15 '20 PM3:49
OHIO CO CIRCUIT COURT

**CIVIL CASE INFORMATION STATEMENT
CIVIL CASES**

In the Circuit Court of Ohio County, West Virginia

I. CASE STYLED: Russell Bennett and Barbara Bennett v. Vebi Vehapi and MS Transport, LLC

Plaintiffs:

Civil Action No. 20-C-246

Judge Sims

Russell Bennett
332 Bennett Lane
Dallas, WV 26036

Barbara Bennett
332 Bennett Lane
Dallas, WV 26036

vs.

Defendants:

Days to Answer

Type of Service

Vebi Vehapi
10044 Bunker Hill Drive
St. Louis, MO 63123

20

Certified Mail

MS Transport, LLC
1091 Hickory Ridge Trail
Arnold, MO 63010

20

Certified Mail

Original and 3 copies of the Complaint are furnished herein.

PLAINTIFFS: Russell Bennett and Barbara Bennett DEFENDANTS: Vebi Vehapi and MS Transport	Civil Action Number: 20-C-246
---	-------------------------------

II. TYPE OF CASE:

<input checked="" type="checkbox"/> General Civil	<input type="checkbox"/> Adoption	<input type="checkbox"/> Malpractice
<input type="checkbox"/> Mass Litigation (as defined in TCR Rule	<input type="checkbox"/> Administrative Agency Appeal	<input checked="" type="checkbox"/> Personal Injury

XIX(c))		
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Civil Appeal from Magistrate Court	<input type="checkbox"/> Product Liability
<input type="checkbox"/> Carpal Tunnel Syndrome	<input type="checkbox"/> Miscellaneous Civil	<input checked="" type="checkbox"/> Auto
<input type="checkbox"/> Silicone Implants	<input type="checkbox"/> Mental Hygiene	<input type="checkbox"/> Contract
<input type="checkbox"/> Industrial Hearing Loss	<input type="checkbox"/> Guardianship	<input type="checkbox"/> Real Property
<input type="checkbox"/> Diet Drugs	<input type="checkbox"/> Modification/Magistrate Rules	<input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ
<input type="checkbox"/> Note/Payments of Debt	<input type="checkbox"/> Commercial Credit	<input type="checkbox"/> Other - Insurance/Unfair Claims Settlement Practices

III. JURY DEMAND:☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): unknown

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY? ☐ Yes ☒ No

If yes, please specify:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ reader or other auxiliary aid for the visually impaired
- ☐ spokesperson or other auxiliary aid for the speech impaired
- ☐ Other:

Attorney: Ronald W. Zavolta (WV No. 8739)
 Paul J. Ratcliffe (WV No. 13453)
 Michael P. Zavolta (WV No. 13871)

Firm: **Zavolta Law Offices**

Address: 1287 Fairmont Pike Road, Wheeling, WV 26003

Telephone: (304) 905-8073

Dated: December 15, 2020

Signature: Paul J. Ratcliffe**Representing:**

- ☒ Plaintiffs
- ☐ Defendant
- ☐ Cross-Complainant
- ☐ Cross-Defendant
- ☐ Proceeding without an attorney

SUMMONS
CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**RUSSELL BENNETT and
BARBARA BENNETT
PLAINTIFF,**

VS.

**CIVIL ACTION NO. 20-C-246
JUDGE: DAVID J. SIMS**

**VEBI VEHAPI and
MS TRANSPORT, LLC
DEFENDANT.**

To the above named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon RONALD W. ZAVOLTA, plaintiff's attorney, whose address is ZAVOLTA LAW OFFICES, 1287 FAIRMONT PIKE ROAD, WHEELING, WV, 26003 an answer including any related counterclaim you may have to the complaint filed against you in the above civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

BRENDA L MILLER
CLERK OF COURT

Dated: December 15, 2020

Please Serve:
**MS TRANSPORT, LLC
1091 HICKORY RIDGE TRIAL
ARNOLD, MO63010**

d:\corel\boiler\civsum.wpd



SUMMONS

CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

RUSSELL BENNETT and
BARBARA BENNETT

PLAINTIFF,

VS.

CIVIL ACTION NO. 20-C-246

JUDGE: DAVID J. SIMS

VEBI VEHAPI and
MS TRANSPORT, LLC
DEFENDANT.

To the above named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon RONALD W. ZAVOLTA, plaintiff's attorney, whose address is ZAVOLTA LAW OFFICES, 1287 FAIRMONT PIKE ROAD, WHEELING, WV, 26003 an answer including any related counterclaim you may have to the complaint filed against you in the above civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

BRENDA L MILLER

CLERK OF COURT

Dated: December 15, 2020

Please Serve:

VEBI VEHAPI

10044 BUNKER HILL DRIVE

ST. LOUIS, MO 63123

d:\corel\boiler\civsum.wpd



OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 100452

OHIO
1500 CHAPLINE ST.
WHEELING

DATE RECEIVED: 12/15/2020

RECEIVED FROM: RONALD ZAVOLTA

TOTAL: \$40.00

STYLE OF CASE
RUSSELL BENNETT
VS.
VEBI VEHAPI

CASE #: 20-C-246

IN PAYMENT OF CERTIFIED MAIL
BY Check 5552BRENDA L MILLER
CLERK OF THE CIRCUIT COURTBY BH

7019 2280 0000 5196 4608

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$

Sent To MS Transport LLC
Street and Apt. No., or PO Box No. 1091 Hickory Ridge Trail
City, State, ZIP+4® Arnold, MO 63010

Postmark Here 12/15/20

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7019 2280 0000 5196 4585

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$

Sent To Vebi Vehapi
Street and Apt. No., or PO Box No. 14044 Booker Hill Drive
City, State, ZIP+4® St. Louis, MO 63123

Postmark Here 12/15/20

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

DEC 15 '20 PM3:49
OHIO CO CIRCUIT COUR

Ronald W. Zavolta, Esq.
(W.V. Bar 8739)

Paul J. Ratcliffe, Esq.
(W.V. Bar 13453)
(Ohio Bar 99215)

Michael P. Zavolta, Esq.
(W.V. Bar 13871)

Zavolta
LAW OFFICE

1287 Fairmont Pike Road
Wheeling, WV 26003

P: (304) 905-8073
F: (304) 905-8992

December 15, 2020

Ms. Brenda L. Miller
Ohio County Circuit Court
1500 Chapline Street
Wheeling, WV 26003

RE: Bennett, et. al. v. Vehapi, et. al.
Civil Action No. 20-C-246

Dear Ms. Miller:

Please find enclosed for filing an **Amended Complaint** in the above referenced case. I have attached four copies of the same. One for filing with the Court, two for service via Certified Mail, and one for return, time stamped for my records. I have also enclosed a check for \$40.00 for the Service fee.

Thank you for your attention to this matter.

Very truly yours,

/s/ Paul J. Ratcliffe, Esq.

Paul J. Ratcliffe, Esq.

PJR/rts